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*Attorneys for Defendants City of Tucson, Nicolo Solarino, Francisco Santa Maria, Marco Durazo, Sean Yeandle, Henry Gamez, Donovan Vance, Ryan Ake, Joseph Gradias, Eric Evans, Scott Ellis, Raymond Fleck, Silas Spencer, Keith Goldstein (hereafter "City Defendants")*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

Irene Briseno, on her own behalf and as the  
personal representative of the estate of  
Damian Eryko Alvarado,

Plaintiff,

vs.

City of Tucson; Nicolo Solarino (Tucson  
Police); Francisco Santa Maria (Tucson  
Police); Marco Durazo (Tucson Police); Sean  
Yeandle (Tucson Police); Henry Gamez  
(Tucson Police); Donovan Vance (Tucson  
Police); R. Ake (Tucson Police); Joseph  
Gradias (Tucson Police); Eric Evans (Tucson  
Police); Scott Ellis (Tucson Police);  
Raymond Flex (Tucson Fire); Silas Spencer  
(Tucson Fire); Keith Goldstein (Tucson  
Fire); and Justin Canovali (private citizen),  
all in their individual capacities,

Defendants.

No. 4:22-cv-00132

**DEFENDANT CITY OF TUCSON'S  
REPLY TO PLAINTIFF'S RESPONSE  
IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS**

(Assigned to Hon. Raner C. Collins)

Defendants City of Tucson, Nicolo Solarino, Francisco Santa Maria, Marco Durazo,  
Sean Yeandle, Henry Gamez, Donovan Vance, Ryan Ake, Joseph Gradias, Eric Evans,  
Scott Ellis, Raymond Fleck, Silas Spencer, and Keith Goldstein (hereafter "City  
Defendants" or identified individually by last name), hereby submit the following reply in  
support of their motion to dismiss as follows.

1 An arrest can go wrong even in the absence of wrongdoing. The purpose of [42](#)  
2 [U.S.C. § 1983](#) is not to hold governmental officials responsible for every bad outcome but  
3 only for violations of constitutional rights that were clearly established at the time of the  
4 incident. Similarly, under Arizona state law, a Plaintiff must do more than show a  
5 lamentable outcome; she must demonstrate gross negligence. Here, Plaintiff has pled only  
6 a bad outcome. She certainly has not made the case that Defendants acted with deliberate  
7 indifference, with gross negligence, or in a way that shocks the conscience.

8 Defendants fully articulated the basis for their Motion to Dismiss and will here  
9 address a couple of points from Plaintiff's Response. (Doc. 54).

10 **I. All Defendants moved to dismiss Plaintiff's Fourteenth Amendment claim for**  
11 **deliberate indifference.**

12 For some reason, Plaintiff alleges that Defendants failed to move to dismiss this  
13 claim. However, the rationale for dismissing the paramedics was addressed in Sec. II(A),  
14 and the basis for dismissing the Tucson police officers was addressed in Sec. II(B)(4).  
15 (Doc. 49). Indeed, Defendants cited to case law on behalf of both groups of individual  
16 Defendants that Plaintiff did not contravene or seek to distinguish.

17 With respect to the paramedics, Plaintiff's Complaint does not allege that Alvarado  
18 suffered from a serious medical need that paramedics failed to address. Instead, the  
19 Complaint makes plain that paramedics undertook approximately eight minutes of medical  
20 evaluation of Alvarado. (Doc. 1, ¶ 144). The Complaint further states that paramedics  
21 determined Alvarado "was medically stable." The Complaint does not allege that this  
22 conclusion was drawn in bad faith or even that it was in error. The Complaint makes no  
23 case for the paramedics or officers to have disregarded the determination that Alvarado  
24 was medically stable. And indeed, the Complaint alleges that Alvarado gave no indication  
25 of distress after the medical evaluation was complete. (Doc. 1, ¶ 145).

26 As for the officers, it is enough that they summoned medical assistance. [Tatum v.](#)  
27 [City & Cnty. of San Francisco](#), 441 F.3d 1090 (9th Cir. 2006). No clearly established law  
28

1 asks police officers to override the medical judgment of paramedics who have assessed a  
2 subject.

3 The Complaint itself makes clear that none of the individual Defendants were  
4 deliberately indifferent to Alvarado's medical need, and where Plaintiff cannot  
5 demonstrate deliberate indifference, she certainly cannot show that the alleged conduct  
6 shocks the conscience.

7 **II. Plaintiff did not address Defendants' argument that she cannot bring Count**  
8 **VIII or Defendants' analysis regarding Count V.**

9 Count VIII is brought by Plaintiff on her own behalf under the Fourteenth  
10 Amendment's liberty interest. Plaintiff did not address Defendants' arguments that  
11 Plaintiff's ability to bring her own claim under the liberty interest clause is not clearly  
12 established.

13 Additionally, Plaintiff fails to address Defendants' analysis regarding the factual  
14 allegations meant to support Count V. While drug addiction can be a disability under the  
15 A.D.A and Plaintiffs allege that Alvarado suffered from drug addiction, the Complaint  
16 does not allege that officers were aware of that fact. The Complaint alleges only that  
17 officers knew Alvarado was under the influence of a drug at the time of the incident. But  
18 there is no indication that drug use, as opposed to drug addiction, is covered by the  
19 A.D.A.<sup>1</sup> And while Plaintiff is entitled to all reasonable inferences in her favor at the  
20 pleading stage, the Complaint is quite specific in its allegations regarding Alvarado's drug  
21 use, and it is simply not alleged nor reasonable to infer that officers were aware of  
22 Alvarado's *addiction*.

23 **CONCLUSION**

24 The Complaint describes an interaction between Alvarado and police and  
25 paramedics that ended badly, nothing more. It does not allege deliberate indifference or

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27 <sup>1</sup> Without reflection, this may seem like a distinction without a difference, but in practice  
28 (e.g. for insurance coverage, mitigation in criminal cases, eligibility for treatment and services) the distinction is a relevant one.

1 disregard; it does not allege discrimination or gross negligence. It describes only tragedy.  
2 But such is not enough to deprive government officials of qualified immunity or to  
3 establish liability for a bad turn of events. For that reason and the arguments set forth in  
4 Defendants' Motion to Dismiss, Defendants' motion should be granted.

5 DATED: September 13, 2022.

6 MICHAEL G. RANKIN  
7 City Attorney

8 By s/ Renee J. Waters  
9 Renee J. Waters  
10 Principal Assistant City Attorney

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on September 13, 2022, I electronically transmitted the attached  
13 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
14 Notice of Electronic Filing to the following CM/ECF registrants:

15 Paul Gattone  
16 Law Office of Paul Gattone  
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21 By E. Acosta/rdv  
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